

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was **not** written for publication in a law journal and (2) is **not** binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte RICK E. KIBBEE

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Appeal No. 1998-1609  
Application No. 08/589,022

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ON BRIEF<sup>1</sup>

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Before COHEN, ABRAMS, and GONZALES, Administrative Patent Judges.

COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 15. Claims 16 through 19 stand allowed. These claims constitute all of the claims in the application.

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<sup>1</sup> A hearing set for November 18, 1999 was waived by appellant (Paper No. 15).

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The invention before us pertains to a garment anchoring system. A basic understanding of the invention can be derived from a reading of exemplary claim 1, a copy of which appears in the APPENDIX to the brief (Paper No. 10).

As evidence of obviousness, the examiner has applied the documents listed below:

Larsen	5,033,121	Jul. 23, 1991
Atwater et al. 1992 (Atwater)	5,131,100	Jul. 21,

The following rejection is before us for review.<sup>2</sup>

Claims 1 through 15 stand rejected under 35 U.S.C. § 103 as being unpatentable over Larsen in view of Atwater.

The full text of the examiner's rejection and response to the argument presented by appellant appears in the final rejection and the answer (Paper Nos. 6 and 11), while the complete statement of appellant's argument can be found in the brief (Paper No. 10).

#### OPINION

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<sup>2</sup> A final rejection of claim 3 under 35 U.S.C. § 112, second paragraph, was overcome, as indicated in an advisory action (Paper No. 8).

In reaching our conclusion on the obviousness issue raised in this appeal, this panel of the board has carefully considered appellant's specification and claims, the applied teachings,<sup>3</sup> and the respective viewpoints of appellant and the examiner. As a consequence of our review, we make the determination which follows.

We reverse the examiner's rejection of claims 1 through 15.

In the specification (pages 32 and 33), appellant explains the advantages of the legged brief version 50c of the invention (Fig. 6). In particular, the legged brief includes an elastic waistband and also elastically encircles the thighs of a wearer providing tension around the wearer's legs, with

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<sup>3</sup> In our evaluation of the applied prior art, we have considered all of the disclosure of each document for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

the result that more stable anchoring points are provided, as illustrated at point 74.

Independent claim 1 is drawn to a garment anchoring system comprising, inter alia, a horizontally and vertically elastic lower garment having a continuous waistband of elastic material and an elastic body portion including a pair of leg encircling bands, and fastening means at the front and back of the lower garment. Claim 10 recites a garment anchoring system comprising, inter alia, a lower garment including a legged brief lower torso fitting body portion having a top and a pair of leg portions, an elastic waistband including a continuous waist-encircling elastic fiber material having a first part of a hoop and loop fastener material. Claim 12 sets forth a garment anchoring system comprising, inter alia, a lower garment including a legged brief lower-torso fitting body portion having a continuous elastic waistband having a pair of leg portions, and pressure responsive fastener material secured to the waistband at the front and back thereof.

Turning now to the applied prior art, we find that the specific focus of patentee Larsen in resolving the problem of

retaining shirt tails is not on acknowledged known and conventional briefs and boxer shorts of the type that one having ordinary skill in the art would understand as having continuous waistbands (column 1, lines 10 through). Instead, Larsen teaches a particular type of brief 19 (Fig. 3) which is characterized in the specification (column 3, lines 20 through 24) and claims of the patent as elastically girding a person's body substantially all around, i.e., the front and rear waists 26 and 18 are interrupted by short sections at each side of a shirt 11.

Considering the overall teaching of Larsen, we fail to perceive where one having ordinary skill in this art, absent appellant's own teaching, would have derived a suggestion to seek out the particular athletic compression shorts of Atwater for making an obvious modification of the article of Larsen. Clearly, the type of brief of interest to Larsen has distinctly different characteristics from the shorts disclosed by Atwater. More specifically, it is clear to us that the Larsen brief 19 (Fig. 3) would not have been suggestive of a legged brief with a continuous elastic waistband and leg encircling bands or leg portions. In our opinion, only

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impermissible hindsight would have enabled one to seek out the Atwater shorts to effect the combination now proposed. Thus, based upon the evidence of obviousness before us, the rejection under 35 U.S.C. § 103 cannot be sustained.

In summary, this panel of the board has reversed the rejection of claims 1 through 15 under 35 U.S.C. § 103 as being unpatentable over Larsen in view of Atwater.

The decision of the examiner is reversed.

REVERSED

IRWIN CHARLES COHEN	)	
Administrative Patent Judge	)	
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	)	
	)	BOARD OF PATENT
NEAL E. ABRAMS	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
JOHN F. GONZALES	)	
Administrative Patent Judge	)	

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